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APPLICATION NO.	FILING DATE	FIRST NAMED INVENTOR	ATTORNEY DOCKET NO.	CONFIRMATION NO.
09/297,648	03/10/2000	LEWIS T. WILLIAMS	2300-1481 CIP	1096

27476 7590 05/31/2002

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EXAMINER

BRUSCA, JOHN S

ART UNIT	PAPER NUMBER
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1631

DATE MAILED: 05/31/2002

27

Please find below and/or attached an Office communication concerning this application or proceeding.

<b>Advisory Action</b>	Applicant No. 09/297,648	Applicant(s) STACHE-CRAIN ET AL.	
	Examiner John S. Brusca	Art Unit 1631	

**--The MAILING DATE of this communication appears on the cover sheet with the correspondence address --**

THE REPLY FILED 23 April 2002 FAILS TO PLACE THIS APPLICATION IN CONDITION FOR ALLOWANCE. Therefore, further action by the applicant is required to avoid abandonment of this application. A proper reply to a final rejection under 37 CFR 1.113 may only be either: (1) a timely filed amendment which places the application in condition for allowance; (2) a timely filed Notice of Appeal (with appeal fee); or (3) a timely filed Request for Continued Examination (RCE) in compliance with 37 CFR 1.114.

**PERIOD FOR REPLY** [check either a) or b)]

a) ☐ The period for reply expires \_\_\_\_\_ months from the mailing date of the final rejection.

b) ☐ The period for reply expires on: (1) the mailing date of this Advisory Action, or (2) the date set forth in the final rejection, whichever is later. In no event, however, will the statutory period for reply expire later than SIX MONTHS from the mailing date of the final rejection. ONLY CHECK THIS BOX WHEN THE FIRST REPLY WAS FILED WITHIN TWO MONTHS OF THE FINAL REJECTION. See MPEP 706.07(f).

Extensions of time may be obtained under 37 CFR 1.136(a). The date on which the petition under 37 CFR 1.136(a) and the appropriate extension fee have been filed is the date for purposes of determining the period of extension and the corresponding amount of the fee. The appropriate extension fee under 37 CFR 1.17(a) is calculated from: (1) the expiration date of the shortened statutory period for reply originally set in the final Office action; or (2) as set forth in (b) above, if checked. Any reply received by the Office later than three months after the mailing date of the final rejection, even if timely filed, may reduce any earned patent term adjustment. See 37 CFR 1.704(b).

1. ☒ A Notice of Appeal was filed on 23 April 2002. Appellant's Brief must be filed within the period set forth in 37 CFR 1.192(a), or any extension thereof (37 CFR 1.191(d)), to avoid dismissal of the appeal.

2. ☐ The proposed amendment(s) will not be entered because:

(a) ☐ they raise new issues that would require further consideration and/or search (see NOTE below);

(b) ☐ they raise the issue of new matter (see Note below);

(c) ☐ they are not deemed to place the application in better form for appeal by materially reducing or simplifying the issues for appeal; and/or

(d) ☐ they present additional claims without canceling a corresponding number of finally rejected claims.

NOTE: \_\_\_\_\_

3. ☒ Applicant's reply has overcome the following rejection(s): See Continuation Sheet.

4. ☐ Newly proposed or amended claim(s) \_\_\_\_\_ would be allowable if submitted in a separate, timely filed amendment canceling the non-allowable claim(s).

5. ☒ The a) ☐ affidavit, b) ☐ exhibit, or c) ☒ request for reconsideration has been considered but does NOT place the application in condition for allowance because: See Continuation Sheet.

6. ☐ The affidavit or exhibit will NOT be considered because it is not directed SOLELY to issues which were newly raised by the Examiner in the final rejection.

7. ☒ For purposes of Appeal, the proposed amendment(s) a) ☐ will not be entered or b) ☒ will be entered and an explanation of how the new or amended claims would be rejected is provided below or appended.

The status of the claim(s) is (or will be) as follows:

Claim(s) allowed: none.

Claim(s) objected to: none.

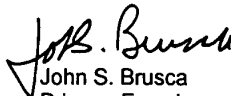
Claim(s) rejected: 22,24-31,33-39,49,51-58,60-67,69-76,78-84,103,105-113,115-118,121-123,125-128 and 131-145.

Claim(s) withdrawn from consideration: \_\_\_\_\_.

8. ☐ The proposed drawing correction filed on \_\_\_\_\_ is a) ☐ approved or b) ☐ disapproved by the Examiner.

9. ☐ Note the attached Information Disclosure Statement(s) (PTO-1449) Paper No(s). \_\_\_\_\_.

10. ☐ Other: \_\_\_\_\_

  
 John S. Brusca  
 Primary Examiner  
 Art Unit: 1631

Continuation of 3. Applicant's reply has overcome the following rejection(s): the rejection of claims 40, 42-48, 58, 60-66, 85, 87-94, 96-102, 114, 116, 119, 120, 124, 126, 129, and 130 under 35 U.S.C. 101 and 112, first paragraph for lack of utility and enablement.. In addition the insertion of pages to the specification would be entered as it rectifies previously noted discrepancies in the specification.

Continuation of 5. does NOT place the application in condition for allowance because: The rejections under 35 U.S.C. 112, first paragraph is maintained because a full open reading frame is not described that is related to the claimed invention and therefore the claims (including newly filed claims 132-145) read on undescribed full open reading frames and their encoded polypeptides due to the presence of open language (consisting of) in all claims. Also the rejections under 102(a), 102(b), and 103(a) would be maintained and extended to newly filed claims 132-145 as for the claim from which they immediately depend from in view of the presence of "degenerate variant" which is broadly interpreted to mean any variant. The applicants state that the phrase is equivalent to a conservative variant encoding an identical polypeptide, but provide no support for their statement in the specification or prior art..